

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR
AND INDUSTRIAL RELATIONS,

Complainant,

v.

INTERNATIONAL ROOFING &
BUILDING CONSTRUCTION, INC.,

Respondent.

CASE NO. OSH 2007-6

ORDER NO. 241

PRETRIAL ORDER

PRETRIAL ORDER

Pursuant to the initial conference in this matter held by the Hawaii Labor Relations Board ("Board") on April 3, 2007, and attended by Herbert B.K. Lau, Deputy Attorney General, for Complainant, and Neal K. Aoki, Esq., for Respondent, IT IS HEREBY ORDERED THAT:

1. The issues to be determined at trial are as follows:
 - A. Whether all citation items resulting from Inspection No. 310388053, including the characterizations and penalties, are valid and proper.
 - i. Citation 1 Item 1 alleged 29 CFR 1926.501(b)(13) was violated because two employees working on a roof without fall protection were exposed to serious injuries in the event of a fall to the lower level. Respondent was previously cited for a violation of this or an equivalent standard in Inspection No. 306260373, Citation 1 item 1, issued on July 28, 2003, which became a final order on August 17, 2003, and/or Inspection No. 308488238, Citation 1 item 1, issued on August 2, 2005, which became a final order on August 22, 2005, and/or Inspection No. 309454726, Citation 1 item, 1, issued on January 9, 2006, and which became a final order on January 29, 2006. The violation was characterized as "repeat." A penalty of \$10,500.00 was imposed.

- ii. Citation 2 Item 1 alleged that 29 CFR 1926.503(a)(2)(iii) was violated because "[a]n employee exposed to a 10 foot fall to the lower level was not trained in the use and operation of personal fall arrest systems." The violation was characterized as "serious." A penalty of \$2,100.00 was imposed.
 - B. Respondent raises unforeseeable or undiscoverable employee misconduct as an affirmative defense.
- 2. Any motion to dismiss or motion for summary judgment regarding the citation items must be filed with the Board on or before **April 27, 2007**. Complainant's responsive memorandum to such motion must be filed on or before **May 4, 2007**.
 - 3. A hearing on any motion to dismiss or motion for summary judgment filed shall be heard on **May 15, 2007**, at 1:30 p.m., in the Board's hearing room located at Room 434, 830 Punchbowl Street, Honolulu, Hawaii, 96813.
 - 4. The deadline for the parties' final naming of witnesses is **May 14, 2007**. Each party shall provide a list of the names of witnesses it plans to call at trial, along with the witnesses' addresses and expected area of testimony, to the other party and to the Board by this date.
 - 5. The discovery cutoff date is **July 17, 2007**. All other discovery, including depositions and document requests, must be completed by this date.
 - 6. Trial in this matter is scheduled for **August 13, 2007**, at 9:30 a.m., or as soon thereafter as this case can be heard, in the Board's hearing room located at Room 434, 830 Punchbowl Street, Honolulu, Hawaii, 96813. The trial will continue from day-to-day until completed.
 - 7. Hereafter, this Pretrial Order shall control the course of proceedings and may not be amended except by consent of the parties and the Board, or by order of the Board.

DATED: Honolulu, Hawaii, April 4, 2007.

HAWAII LABOR RELATIONS BOARD


BRIAN K. NAKAMURA, Chair

DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS v.
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EMORY J. SPRINGER, Member


SARAH R. HIRAKAMI, Member

NOTICE TO EMPLOYER

You are required to post a copy of this Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted at least five working days prior to the trial date. Further, you are required to furnish a copy of this Order to a duly recognized representative of the employees, if any, at least five working days prior to the trial date.

Copies sent to:

Hebert B.K. Lau, Deputy Attorney General
Neal K. Aoki, Esq.